

§ 20.1300 Rule 1300. Removal of Board records.

No original record, paper, document or exhibit certified to the Board may be taken from the Board except as authorized by the Chairman or except as may be necessary to furnish copies or to transmit copies for other official purposes.

(Authority: 38 U.S.C. 5701)

[61 FR 29028, June 7, 1996]

§ 20.1301 Rule 1301. Disclosure of information.

(a) *Policy.* It is the policy of the Board of Veterans' Appeals for the full text of appellate decisions, Statements of the Case, and Supplemental Statements of the Case to be disclosed to appellants. In those situations where disclosing certain information directly to the appellant would not be in conformance with 38 U.S.C. 5701, that information will be removed from the decision, Statement of the Case, or Supplemental Statement of the Case and the remaining text will be furnished to the appellant. A full-text appellate decision, Statement of the Case, or Supplemental Statement of the Case will be disclosed to the designated representative, however, unless the relationship between the appellant and representative is such (for example, a parent or spouse) that disclosure to the representative would be as harmful as if made to the appellant.

(Authority: 38 U.S.C. 7105(d)(2))

(b) *Public availability of Board decisions*—(1) *Decisions issued on or after January 1, 1992.* Decisions rendered by the Board of Veterans' Appeals on or after January 1, 1992, are electronically available for public inspection and copying on the Internet at <http://www.index.va.gov/search/va/bva.html>. All personal identifiers are redacted from the decisions prior to publication. Specific decisions may be identified by a word and/or topic search, or by the Board docket number. Board decisions will continue to be provided in a widely-used format as future advances in technology occur.

(2) *Decisions issued prior to January 1, 1992.* Decisions rendered by the Board of Veterans' Appeals prior to January

1, 1992, have been indexed to facilitate access to the contents of the decisions (BVA Index I-01-1). The index, which was published quarterly in microfiche form with an annual cumulation, is available for review at Department of Veterans Affairs regional offices and at the Research Center at the Board of Veterans' Appeals in Washington, DC. Information on obtaining a microfiche copy of the index is also available from the Board's Research Center. The index can be used to locate citations to decisions with issues similar to those of concern to an appellant. Each indexed decision has a locator number assigned to it. The manner in which the locator number is written depends upon the age of the decision. Decisions archived prior to late 1989 have a number such as *82-07-0001*. Decisions archived at a later date have a number such as *BVA-90-12345*. This number must be used when requesting a paper copy of that decision. These requests must be directed to the Research Center (01C1), Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.

(Authority: 5 U.S.C. 552(a)(2), 38 U.S.C. 501(a))

[57 FR 4109, Feb. 3, 1992, as amended at 71 FR 18009, Apr. 10, 2006; 81 FR 32650, May 24, 2016]

§ 20.1302 Rule 1302. Death of appellant during pendency of appeal before the Board.

(a) *General.* An appeal pending before the Board of Veterans' Appeals when the appellant dies will be dismissed without prejudice. A person eligible for substitution under § 3.1010 of this chapter may file with the agency of original jurisdiction a request to substitute for the deceased appellant. If the agency of original jurisdiction grants the request to substitute, the case will assume its original place on the docket pursuant to Rule 900 (§ 20.900(a)(2)). If the agency of original jurisdiction denies the request to substitute and the person requesting to substitute appeals that decision to the Board, the appeal regarding eligibility to substitute will assume the same place on the docket as the original claim pursuant to Rule 900 (§ 20.900(a)(2)).

(b) *Exception.* (1) If a hearing request is pending pursuant to Rule 704 (§ 20.704) when the appellant dies, the agency of original jurisdiction may

§ 20.1303

38 CFR Ch. I (7–1–16 Edition)

take action on a request to substitute without regard to whether the pending appeal has been dismissed by the Board, if the request is submitted in accordance with § 3.1010 of this chapter.

(2) If the agency of original jurisdiction grants the request to substitute, the Board of Veterans' Appeals can then take the testimony of the substitute at a hearing held pursuant to Rules 700 through 717 (§§ 20.700 through 20.717). If the substitute desires representation at the hearing, he or she must appoint a representative prior to the hearing pursuant to § 14.631(g) of this chapter.

(Authority: 38 U.S.C. 5121A, 7104(a)).

[79 FR 52984, Sept. 5, 2014]

§ 20.1303 Rule 1303. Nonprecedential nature of Board decisions.

Although the Board strives for consistency in issuing its decisions, previously issued Board decisions will be considered binding only with regard to the specific case decided. Prior decisions in other appeals may be considered in a case to the extent that they reasonably relate to the case, but each case presented to the Board will be decided on the basis of the individual facts of the case in light of applicable procedure and substantive law.

(Authority: 38 U.S.C. 7104(a))

§ 20.1304 Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.

(a) *Request for a change in representation, request for a personal hearing, or submission of additional evidence within 90 days following notification of certification and transfer of records.* An appellant and his or her representative, if any, will be granted a period of 90 days following the mailing of notice to them that an appeal has been certified to the Board for appellate review and that the appellate record has been transferred to the Board, or until the date the appellate decision is promulgated by the Board of Veterans' Appeals, whichever comes first, during which they may submit a request for a personal hearing, additional evidence, or a request

for a change in representation. Any such request or additional evidence must be submitted directly to the Board and not to the agency of original jurisdiction. The date of mailing of the letter of notification will be presumed to be the same as the date of that letter for purposes of determining whether the request was timely made or the evidence was timely submitted. Any evidence which is submitted at a hearing on appeal which was requested during such period will be considered to have been received during such period, even though the hearing may be held following the expiration of the period. Any pertinent evidence submitted by the appellant or representative is subject to the requirements of paragraph (d) of this section if a simultaneously contested claim is involved.

(b) *Subsequent request for a change in representation, request for a personal hearing, or submission of additional evidence—(1) General rule.* Subject to the exception in paragraph (b)(2) of this section, following the expiration of the period described in paragraph (a) of this section, the Board of Veterans' Appeals will not accept a request for a change in representation, a request for a personal hearing, or additional evidence except when the appellant demonstrates on motion that there was good cause for the delay. Examples of good cause include, but are not limited to, illness of the appellant or the representative which precluded action during the period; death of an individual representative; illness or incapacity of an individual representative which renders it impractical for an appellant to continue with him or her as representative; withdrawal of an individual representative; the discovery of evidence that was not available prior to the expiration of the period; and delay in transfer of the appellate record to the Board which precluded timely action with respect to these matters. Such motions must be in writing and must include the name of the veteran; the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf) or the name of any substitute claimant or appellant; the applicable Department